

REMARKS

Claims 1-13 are pending in the application, with no claims being amended hereby. In the Final Official Action mailed May 5, 2006, Examiner rejected certain of the claims (including all of the independent claims) under 35 U.S.C. 103(a) based on the combination of Bialecki and Barr, with the remaining dependent claims being rejected on the further basis of Luther or Bell. Applicant filed a Response After Final on May 10, 2006 arguing against the rejections. Applicant's Response also questioned whether Bialecki was being asserted as prior art under 35 U.S.C. §102(e) or 35 U.S.C. §102(a), and reserved the right to antedate Bialecki, particularly if Examiner was relying on Section 102(a) for purposes of placing Bialecki in the prior art. Examiner issued an Advisory Action mailed June 5, 2006, which again (wrongly, it is submitted) maintained the rejections, but also clarified that Examiner was relying upon Section 102(a). Under the circumstances, Applicant is submitting this Response to make of record the Declaration of Joseph P. McGurk Under 37 CFR ' 1.131 ("McGurk Declaration") to antedate Bialecki.

Pursuant to Section 102(a), Bialecki is a reference based on its publication date, namely, March 27, 2003. As evidenced by the McGurk Declaration, Joseph P. McGurk, the inventor in this case, invented the claimed subject matter prior to March 27, 2003. In that regard, Mr. McGurk establishes in his Declaration that he conceived of the subject matter well prior to March 27, 2003, and indeed, prior to March 4, 2003. See McGurk Declaration at ¶1 and Exhibit A attached thereto (drawings showing the claimed invention). Further, the present patent application was prepared for his review as of March 4, 2003, also prior to the March 27, 2003 publication date of Bialecki. Id. at ¶2

and Exhibit B attached thereto (Cover of interoffice mailing of the draft application). Mr. McGurk and his then-employer were diligent in moving the application to filing, as evidenced by Mr. McGurk's statements in paragraphs 3 and 4 of his Declaration, Exhibit C thereto showing that he provided his personal information needed for filing on April 7, 2006, and the actual filing of the present case as of the following day, April 8, 2003, less than two weeks after Bialecki published.

Under the circumstances, it is respectfully submitted that Mr. McGurk has antedated Bialecki and that, therefore, Bialecki is not available as a reference here. As all of the rejections rely, at least in part, on Bialecki, with Bialecki removed as a reference, the rejections fail. MPEP §715.02(I) (a section 103 rejection can be overcome by antedating any one of the references being relied upon for the rejection).¹

CONCLUSION

In view of the foregoing, Applicant respectfully solicits reconsideration and withdrawal of the rejections. Applicant submits that all outstanding issues in the Official Action have been addressed, and that the pending claims are in condition for allowance. Applicant therefore solicits a formal Notice of Allowance at the earliest opportunity. If any issues remain, Examiner is respectfully asked to telephone undersigned attorney at (513) 241-2324 in an effort to promptly resolve same.

If any fee is due, consider this as an authorization to charge deposit account 23-3000 therefor.

¹ Applicant further continues to submit that the combination of Bialecki and Barr fails to teach the claimed invention in any event. The present Response is submitted without waiver of right to continue to assert that, or any other, argument in support of patentability of the claims.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P

By: /kurt l. grossman/
Kurt L. Grossman, Reg. No. 29,799

2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
(513) 241-2324 (voice)
(513) 241-6234 (facsimile)